IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 20/2005

1. Shri Uday Pundalik Nadkarni,
son of late Pundalik Nadkarni,
major, married, business,

2. Smt. Shobha Uday Nadkarni,
wife of Uday Pundalik Nadkarni,
Housewife,

Both residents of House No.102,
Kavlem, Ponda, Goa. ..... Petitioners.

V/s.

Shri Amarnath N.S. Talwadkar,
son of Narayan S. Talwadkar,
major in age, service,
Resident of Amona, Quepem, Goa. ..... Respondent.

Shri S. D. Padiyar, Advocate for the petitioners.

Shri Sudesh Usgaonkar, Advocate for the respondent.

CORAM : R.M.S. KHANDEPARKAR, J.

DATE : 23RD FEBRUARY, 2006.

ORAL JUDGMENT :

Heard Advocates for the parties. Rule. By consent, the rules is made returnable forthwith.

2. The petitioners challenge the order dated 23.11.05, passed in Execution Application No.29/03/A, rejecting the objections sought to be raised on behalf of the petitioners, who are the Judgment-debtors in the execution proceedings before the executing Court.

3. By the Decree dated 31.3.03 passed in Civil Suit No. 57/96/A, the petitioners were required to execute a final sale deed in favour of the respondent as per Exhibit PW.1/A within a period of 60 days from the date of the Judgment and Decree. Since the petitioners failed to execute the sale deed, the respondent filed execution proceedings which were sought to be objected to by the petitioners on various grounds. Though, in reply to the notice of execution application the petitioners filed a very cryptic reply, the same was followed by written submissions on behalf of the Judgment-debtors as well as on behalf of the Decree-holder. The executing Court, thereafter, passed the impugned order.

4. It is the contention of the petitioners that the executing Court has rejected the objection without application of mind and without considering the points sought to be raised on behalf of the petitioners. The learned Advocate appearing on behalf of the respondents has fairly expressed his inability to support the impugned order.

5. A plain reading of the impugned order would disclose that the executing Court totally ignoring the provisions of Section 47 and the relevant provisions of Order 21, discarded the objections raised by the Judgment-debtors with one sentence "I do not find merit in the written arguments filed by the Advocate of the Judgment-debtors." The impugned order nowhere enumerates the nature of the objections. It merely states that the objections relate to identification of the property. In what way the identification of the property was sought to be disputed is not referred to by the learned executing Court in the impugned order. This not only discloses non-application of mind, but it reveals totally arbitrary and capricious exercise of the jurisdiction by the executing Court. Once the Judgment-debtors appear before the executing Court and raise certain objections for execution of the decree, it is absolutely necessary for the executing Court to consider such objections in accordance with the provisions of law. The objections cannot be rejected merely because the executing Court feels or thinks that the written arguments do not warrant merit. If the arguments are meritless, it is necessary for the Court to analyse the arguments and arrive at the conclusion as to how the arguments are meritless. The reasonings in that regard should precede the said finding. A perusal of the impugned order nowhere discloses any such exercise having been done by the executing Court in the matter in hand.

6. The impugned order is totally non-speaking order and on that count itself is not sustainable and is liable to be set aside and the matter to be remanded to the executing Court to deal with the objections sought to be raised on behalf of the petitioner and contested by the respondent in accordance with the provisions of law and pass a reasoned order.

7. In the result, therefore, the petition succeeds and the impugned order is, hereby, set aside and the rule is made absolute in the above terms with further direction to dispose of the execution proceedings as expeditiously as possible and in any case within a period of six months from the date of receipt of writ of this Court. There shall be no order as to costs.

R.M.S. KHANDEPARKAR, J.

ssm.